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**HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 1589 OF 2007.
IN
WRIT PETITION NO. 684 OF 2000.

Maharashtra Housing & Area
Development Authority. ..Applicant.

Versus.

V. B. Sakhare & others. ..Respondents.

Mr.A.A.Kumhakoni, Associate Advocate General a/w Mr.
V.P.Malavankar A.G.P. for the State - Applicant.

Mr. S. A. Sawant for the respondents.

**CORAM: S. B. MHASE &
D.G.KARNIK, JJ.**

DATE: JULY 6, 2007.

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1. Heard. There was one Chawl by name Gulam Ahmed Chawl. In the said Chawl there were 160 occupants. The said chawl was in dilapidated condition. Therefore, the Maharashtra Housing and Area Development Authority (in short, "the MHADA",) has taken the said chawl in possession for reconstruction under the scheme. 160 occupants were transferred to the transitory accommodation and since last 30 years those 160 families are staying in transitory accommodation. After the 160 families were shifted to the transitory accommodation the chawl in question was demolished by the MHADA and the ground was cleared. Adjacent to the said plot of

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land there was another plot under reservation which MHADA wanted to take for development along with the premises of the Gulam Ahmed Chawl. Therefore, the modification of the development plan under the MRTTP Act was necessary. Some time was consumed in the process of modification of the scheme. However the fact remains that in or about 1978 the Chawl was vacated and the building was pulled down.

. It is the submission of the MHADA that on this plot of Chawl, the respondent nos. 2 to 13 have made encroachment and constructed hutments. According to the MHADA this encroachment has taken place some time after 1995. According to the respondent nos. 2 to 13 they are in possession of the said premises since prior to 1995. However, learned counsel for the respondent nos. 2 to 13 was unable to give the exact date of their possession. However, the fact remains that in respect of the counter claims made by both sides, the encroachments must have taken place some time after 1978, i.e., after the building / chawl was pulled down by the MHADA.

2. After the modification of the development plan under the MRTTP Act, when the MHADA tried to develop the land, it appears that the respondent nos. 2 to 13 approached the Slum Authority and tried to get protection under the Slum Rehabilitation Act. Certain orders were passed by the Authorities in their favour.

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Those orders were challenged by the MHADA by filing writ petition bearing No.684 of 2000. Therefore, the rights of the respondent nos. 2 to 13 as to whether they are entitled to get the premises and/or remain in possession of the said premises in view of the provisions of the Slum Rehabilitation Act or not, and/or whether they are entitled to get any accommodation from the MHADA is the subject matter of the writ petition No. 684 of 2000.

3. It appears that while Writ Petition No. 684 of 2000 was pending the respondent nos. 2 to 13 have filed civil application bearing No. 6135 of 2000 making certain grievances against the MHADA since MHADA tried to evict them. However, this Court has passed an order of status quo. It further appears that in spite of the status quo order, the MHADA tried to remove them. Therefore, contempt application being No. 164 of 2000 has been filed and it is pending.

4. Pending this matter as stated above, 160 occupants of the Gulam Ahmed Chawl for whose benefit the MHADA has floated the scheme have filed Writ Petition No. 155 of 2000 before this Court making a grievance that since last more than 30 years they are staying in transit accommodation, therefore the MHADA be directed to construct the premises as per the original scheme and that they shall be placed in possession of the respective tenements. The said petition is admitted and pending before this Court.

5. Writ Petition No. 684 of 2000 is a matter to be dealt with by the Single Judge. However, in the peculiar facts and circumstances of the case, the Hon'ble the Chief Justice has clubbed both matters together and have placed the matter before the Division Bench so as to avoid the conflicting orders in the matter and have a proper disposal of the matters.

6. Under these facts and circumstances the MHADA has moved the present civil application being C. A. No.1589 of 2007 in Writ Petition No. 684 of 2000. The learned Associate Advocate General Mr. A. A. Kumbhakoni made statements before this Court that at this stage without entering into the disputed controversy and to give a solace to the original occupants of the Gulam Ahmed Chawl, the order of status quo may be modified and the MHADA may be allowed to construct the building as per the scheme. He further stated that in the building which is going to come out there will be about 213 tenements, out of that 160 tenements are to be allowed to the original occupants of the Gulam Ahmed Chawl. He submitted that 53 extra tenements will be available with the MHADA after allotment to the original occupants, therefore, two tenements can be earmarked for the respondent nos. 2 to 13 in the event they succeed in writ petition. He submitted that therefore the

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respondent nos. 2 to 13 be directed to shift themselves in transitory accommodation which will be provided by the MHADA to them till the final disposal of the writ petition or crystallising of their rights by the orders of this Court. He submitted that as to whether 12 earmarked tenements from the newly constructed building of MHADA will be given to the respondent nos. 2 to 13 or not will be decided on the basis of the final decision of writ petition, however till then the respondent nos. 2 to 13 will be allowed to occupy the transit accommodation. He further submitted that in case the petitioners are not successful in writ petition, then respondent nos. 2 to 13 will be removed from the transitory accommodation also.

7. Mr. S. A. Sawant, learned counsel for the respondent nos. 2 to 13 has already filed an affidavit and has expressed that he has no objection for being shifted in transitory accommodation. However, he has contended that the rights of the respondent nos. 2 to 13 shall be accepted by the MHADA and only thereafter they will shift to the transitory accommodation. Thus, in short the respondent nos. 2 to 13 are trying to get their rights crystallised by a concession from the MHADA and/or Authorities of the State Government at this stage without allowing this Court to consider their case on merit. However, the learned Advocate General has opposed to this, it being misuse of the process of law

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and/or getting a certain advantage by using the process of law.

8. In the aforesaid facts and circumstances of the case and to protect the parties involved in the litigation and after having taken into consideration the fact that the project which was to come into existence some 30 years back must have increased in cost in multiple numbers, we find that it will be in the interest of the parties to modify the order of status quo. Therefore, in the overall view of the matter and in the interest of justice and in the interest of all the parties and on the basis of the concessions which are given by the parties across the bar and without adjudicating any rights of the parties at this interim stage we pass the following order.

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(1) The respondent nos. 2 to 13 are hereby directed to vacate the plot of land bearing C.S. Nos. 871 and 872 of Lower Parel Division and shall shift themselves to the transit accommodation provided by the MHADA. This exercise shall be completed by the MHADA and the respondent nos. 2 to 13 within a period of six weeks from today.

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(2) MHADA shall file an undertaking to this Court stating that 12 tenements will be earmarked for allotment to the respondent nos. 2 to 13 in case the respondent nos. 2 to 13 are successful in the pending writ petitions.

(3) MHADA shall also file an undertaking that the project / building consisting of 213 tenements will be completed within a period of 30 months from the date of getting possession from the respondent nos. 2 to 13.

(4) Respondent nos. 2 to 13 shall equally file an undertaking to this Court that in case they are not successful in the writ petition they will even hand over the transit accommodation allotted to them to the MHADA peacefully and without creating any third party rights in the said accommodation.

(5) We make it clear that the rights of the respondent nos. 2 to 13 are subject to the decision of this writ petition, and their claim to entitlement of the tenements is also subject to the decision of this writ petition and every objection of the MHADA or of the respondent nos. 2 to 13 are kept alive till the final disposal of the petitions.

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(6) Civil Application is accordingly disposed of.

(D.G.KARNIK, J.)

(S.B.MHASE, J.)